

TERMS AND CONDITIONS OF RENTAL CONTRACT - GAMKA

For good and valuable consideration, you and Gamka Sales Co., Inc., a New Jersey corporation (also referred to herein as "GSC," "Lessor," "we," "us" and "our") agree as follows:

1. As used herein, "P.1" means the first page of this Contract; "Contract" means P.1 together with these Terms and Conditions; "Rented Item(s)" or "Item(s)" means the item(s) rented to you, as identified on P.1 (including any "Instructions" and/or safety devices provided per Section [or "§"] 4 below); "Site" means the location where the Item(s) is/are to be delivered and/or used, as set forth on P.1; and "Customer," "Lessee," "you" and "your" mean the Customer, Renter and/or Lessee identified on P.1.

2. You agree to rent from GSC the Rented Item(s) for the period(s) specified on P.1 (the "Term"), and at the end of such Term (whereupon your right to possession of the Rented Item(s) shall end) to immediately return all such Item(s) to us. You agree to pay us all rent and other amounts set forth on P.1 (the "Rent"), together with all other charges accruing hereunder, without proration, reduction or setoff, until all such Item(s) is/are returned to and accepted by GSC in the proper return condition as required under § 10. Unless otherwise agreed in writing by GSC, all rental rates are for normal use of the Rented Item(s) on a single-shift basis during the Term, not exceeding 8 hours per 24-hour period for which Rent is charged hereunder (each, a "Rental Day"), 40 hours per 7-Rental Day period, 160 hours per 28-Rental Day period, and otherwise in accordance with the terms hereof and the "Instructions" described in § 4. Additional prorated hourly Rent will be due for overuse and late returns. No allowance will be made for period(s) of nonuse. We have estimated the Rent based on your estimate of the length of the Term (the "Estimated Rent"). Unless otherwise agreed by GSC, you: (a) will pay us: (i) the Estimated Rent and any deposit specified on P.1 in advance of the Term (the "Prepayment"); and (ii) all other amounts coming due hereunder upon demand; and (b) agree that: (i) we may deduct any amount you owe us from any Prepayment; (ii) no interest will accrue on any Prepayment; (iii) no Prepayment will be deemed a limit of your liability to us; and (iv) all Prepayments are **NON-REFUNDABLE**. Anything remaining with, in or on any Item(s) upon return to us will, at our option, be deemed abandoned.

3. Except with respect to Rented Items GSC rents from third parties (each, a "TPO") and then re-rents to you ("Re-Rented Items"), **GSC owns and will retain title to all Rented Items at all times**. You will have exclusive control over all Rented Item(s) during the Term, subject to your obligation to fully comply with this Contract at all times. You **SHALL NOT**: (a) permit the taking or existence of any lien, claim, security interest or encumbrance on any Rented Item; or (b) loan, transfer, sublease, surrender or assign any such Item or this Contract without our prior written consent. GSC may substitute one or more Item(s) at any time, and/or sell or assign all or any part of its interests in the Rented Item(s) and/or this Contract, in which event, you will attend to the assignee, who will not be responsible for any pre-existing obligations or liabilities of GSC or any other Indemnitee hereunder, at law or in equity.

4. Upon the earlier of your receipt, or our delivery to the Site, of the Rented Item(s) unless you immediately reject it/them, you represent, warrant, acknowledge and agree that: (a) each Item: (i) is complete and in good order, condition and repair; (ii) is appropriate for your purposes and in all ways acceptable to you; and (iii) was selected (not based on any recommendation by GSC), carefully examined and inspected by you or your agent(s); and (b) you: (i) have received, read and understand all training, instructions, user manuals, maintenance requirements, and other information, if any, including all applicable laws, rules, regulations, manufacturers' manuals and EPA, OSHA, ASME, IBC, NFPA, IFC, ASSE, IEEE, MSHA, DOT, IFTA and/or ANSI Standards pertaining to such Item(s) (collectively, "Instructions"); (ii) will fully comply therewith (including Tier 4 and Silica Dust requirements); (iii) have been made aware of the need to use all **FALL AND RESPIRATORY PROTECTION AND OTHER SAFETY DEVICES**; (iv) will use each Item only for its intended purpose, in a reasonable and safe manner; (v) will timely give any required notice(s) to, and obtain all necessary licenses, authorizations, permits and approvals from, all affected parties, including governmental authorities, utilities, cable companies and the owner(s) of the Site, and ensure all underground lines, cables and conduits are clearly and properly marked before using any Item(s) to dig or disturb the ground surface (call 811 and go to www.nj1-call.org) at least 3 full business days in advance); (vi) will immediately cease using any Rented Item that is damaged, breaks down, malfunctions or proves defective (a "Malfunction"); and (vii) will ensure that all other users of any Item(s) comply herewith. **You will notify us immediately if any of the foregoing becomes untrue.**

5. In the event of a Malfunction, you will immediately notify, and return the Malfunctioning Item to, GSC, and provided such Malfunction did not result from or in connection with any wrongful or negligent act or omission of, or any breach of any provision of this Contract by, you or anyone you permit to use or deal with such Item(s), we will, at our option: (a) repair the subject Item; (b) provide you with a comparable Item; or (c) with respect only to the Malfunctioning Item, return the unused portion of the Rent and cancel this Contract. **The foregoing remedies are EXCLUSIVE. We will have no other obligation(s) with respect to Malfunctions, all of which you waive, together with all associated direct, indirect, incidental and consequential damages.**

6. You will ensure the Site is safe, secure and fit for delivery and use of the Rented Item(s). If we agree to provide any service(s) (including delivery and/or retrieval), you will: (a) pay our charge(s) therefor, and for all waiting time; (b) be present at the Site at the agreed time(s); and (c) ensure our employees and agents have unlimited access to the Site. GSC will not be responsible for any delay(s) caused by other parties, including you, your agents, employees and contractors as well as other providers of other equipment or services (collectively, "Other Providers") for which you hereby release and agree to indemnify, defend and hold harmless GSC. If you are not present upon delivery or retrieval of any Item(s), you agree to accept the statements of our representatives regarding the same (including status, condition, quality and quantities).

7. **WARNINGS: THE RENTED ITEM(S) CAN BE DANGEROUS. EXERCISE EXTREME CARE, AND ENSURE THAT ALL RENTED ITEMS ARE USED ONLY FOR ITS/THEIR INTENDED PURPOSE(S), BY PROPERLY TRAINED, FAMILIARIZED, QUALIFIED, CERTIFIED, SUPERVISED, INSTRUCTED, AND IF APPLICABLE, LICENSED, ADULTS. YOU AGREE TO PROVIDE ALL APPLICABLE TRAINING, FAMILIARIZATION, INSTRUCTIONS AND WARNINGS TO ALL USERS, OPERATORS AND OCCUPANTS OF THE RENTED ITEM(S), and ensure that each Item is used reasonably, safely and only: (a) for its intended purpose; (b) within its rated capacity; (c) at the Site; and (d) otherwise in compliance with this Contract at all times.**

8. You agree to maintain all insurance GSC deems necessary, including without limitation, the policies described in our Insurance Requirements addendum (also referred to herein as the "Insurance Addendum"), a copy of which you acknowledge receiving and carefully reviewing. You irrevocably appoint GSC as your agent and attorney-in-fact to submit and negotiate claims and payments on all such policies.

9. **NO WARRANTIES: GSC IS NOT THE MANUFACTURER OR DESIGNER OF ANY RENTED ITEM(S), all of which are provided "AS-IS". NEITHER GSC NOR ANY TPO MAKES ANY WARRANTY(IES), EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY(IES) OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUNCTION, DESIGN, QUALITY, CAPACITY, FREEDOM FROM DEFECTS, GOOD AND WORKMANLIKE PERFORMANCE, AND ANY WARRANTY(IES) ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE AND/OR USAGE OF TRADE) regarding any Item(s) or Service(s) referenced in this Contract, nor does GSC or any TPO make any warranty against INTERFERENCE OR INFRINGEMENT, all of which you waive. No depictions, models, descriptions, specifications or advertisements constitute representations or warranties by GSC.**

10. You shall protect, properly service, maintain and care for each Rented Item at all times, keep it safely and securely stored and locked when not in use, and return it to us on time at the end of the Term, clean, free

of contamination (including asbestos, beryllium and silica), and in good order, condition and repair, properly serviced and maintained, and if applicable, full of the proper fuel, fluids and lubricants. If you fail to do so, then in addition to the amounts set forth on P.1, you will pay us: (a) prorated hourly Rent until all Item(s) has been returned or replaced as required; and (b) all costs and expenses we incur in connection with such failure, including without limitation, the full (new) replacement cost of the Rented Item(s). You will not, nor will you permit anyone else to: (i) abuse, misuse, overuse, remove from the Site, conceal, repair, modify, submerge or damage any Rented Item; (ii) violate any Instruction, insurance policy or warranty; (iii) expose any Item(s) to any flammable, explosive, harmful or hazardous substance(s) or circumstance(s); (iv) disable or circumvent any safety device(s) in or on any Rented Item(s); or (v) take possession of or exercise control over any Rented Item, without our prior written consent (in our sole discretion).

11. **INDEMNITY: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, YOU: (A) ASSUME ALL RISKS, INCLUDING WITHOUT LIMITATION, RISK(S) OF PERSONAL AND BODILY INJURY, LOSS, PROPERTY DAMAGE, DESTRUCTION AND CONTAMINATION OF, TO, AND/OR ARISING IN CONNECTION WITH, THE ITEM(S) AND SERVICE(S) REFERENCED IN THIS CONTRACT, AS WELL AS ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM AND/OR IN CONNECTION WITH THE SELECTION, PROVISION, INSPECTION, DESIGN, MANUFACTURE, USE, LOADING, UNLOADING, FUELING, TRANSPORTATION, DEMONSTRATION, STORAGE, SERVICING, MAINTENANCE, REPAIR, DELIVERY AND/OR RETRIEVAL OF SUCH ITEM(S) AND/OR SERVICE(S), WHETHER OR NOT YOUR FAULT (COLLECTIVELY, "RISKS"); (B) RELEASE AND DISCHARGE, AND AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, GSC, EACH TPO, and their respective owners, shareholders, members, managers, officers, directors, partners, agents, affiliates, employees, insurers, subrogees, representatives, successors and assigns (each, an "Indemnitee" and collectively, the "Indemnitees"), for, from and against all such RISKS, as well as all other liabilities, claims, damages, losses, costs and expenses (including without limitation, attorneys' fees) arising from and/or in connection with the Rented Item(s), this Contract and/or any breach hereof by you, your agents, contractors and/or employees; and except only as provided in § 5, (C) WAIVE all rights and remedies available under the Uniform Commercial Code, as well as all direct, indirect, incidental, consequential, general, special, exemplary and punitive damages, against each and every Indemnitee.**

12. If and only if, we have offered, and you have elected to purchase our **OPTIONAL LIMITED DAMAGE WAIVER ("LDW")** and paid (or agreed in writing to pay) the non-refundable LDW Fee (which LDW Fee will be set forth on P.1 if LDW is available), then only with respect to Item(s) covered by LDW ("Covered Items"), your liability for the cost to repair or replace such Covered Items will be limited as set forth in our "Limited Damage Waiver Guide and Addendum," a copy of which you acknowledge receiving and carefully reviewing. You may decline LDW if you provide the property damage insurance referenced in § 8 and the Insurance Addendum. **LDW IS NOT INSURANCE, NOR IS IT A WARRANTY.**

13. This Contract, together with any Addenda we provide (including as applicable, our forms of Limited Damage Waiver and Insurance Addenda), each of which is incorporated herein, represents the entire agreement between you and GSC, superseding all other agreements and representations, including our website and advertising. The terms of this Contract are severable. If any of such terms shall be deemed invalid or unenforceable by any court of competent jurisdiction, it will be deleted, and the remainder of this Contract will remain valid and enforceable. This Contract cannot be further amended or extended except in a writing signed by GSC. **You authorize us to submit all amounts coming due under this Contract (up to 150% of the new replacement cost of the Rented Item(s)) to any debit or credit card(s) you provide, and you waive all associated setoffs and chargebacks.** All amounts due from you hereunder but not timely paid will bear interest at the lesser of: (a) 18% per annum; or (b) the highest rate permitted under applicable law until paid. You agree to pay us the maximum lawful charge for any check you write which is returned unpaid.

14. Your duties hereunder are **unconditional**. If you or your guarantor: (a) fail to fully and timely honor, pay, perform or comply with this Contract and/or any of your obligations arising hereunder or in connection herewith; (b) provide any incorrect or misleading information to us; (c) become insolvent; or (d) die or cease conducting business, or if any Rented Item(s) shall be lost or, unless covered by LDW per § 12, damaged, you will be in default under this Contract, whereupon, we may with or without legal process or notice (and without liability to you), to the maximum extent permitted under applicable law: (i) terminate your right(s) to possession of the Rented Item(s) and/or the Term; (ii) seek relief from stay; (iii) recover, empty, lock, restrict and/or disable any or all such Item(s) without being guilty of breach, trespass or wrongful interference, or liable for any injuries or property damage (for which you agree to indemnify, defend and hold harmless each of the Indemnitees); (iv) perform your obligations hereunder on your behalf, without being obligated to do so; (v) purchase replacement Item(s); (vi) recover from you and/or any guarantor our associated direct and indirect damages, losses, costs and expenses (including without limitation, Rent for the balance of the scheduled Term, loss of use, interest, attorneys' fees and collection costs); and/or (vii) pursue any other rights and/or remedies available hereunder, at law and/or in equity, all of which shall be cumulative.

15. If any legal action is commenced in connection with this Contract, we will be entitled to recover its costs and expenses associated therewith (including our attorneys' fees and expenses) from you if we prevail. Time is of the essence. We may, without further notice or any liability to you, monitor and/or inspect (in person and/or electronically) any Rented Item(s) at any time, and all data generated thereby will be our property. If any performance required of us is rendered impractical as a result of any act or omission of/by you, any Other Provider(s) or any "Act of God" (e.g., any event, fact or circumstance beyond our reasonable control), we will be excused from such performance. You waive the benefits of all statutes of limitations regarding our rights and remedies. **Our maximum liability to you in connection with this Contract is limited to the amount(s) actually paid by you to us hereunder.** These Terms and Conditions apply to all Rented Item(s) identified on P.1 and to all other Items you obtain from GSC at any time (except only as we may otherwise agree). You agree to fully and timely pay all taxes (including without limitation, rental, sales, use, machinery and fuel taxes), fines, fees, tolls, duties, assessments and other charges related to each Item and/or the transactions contemplated herein. Neither our exercise, nor our failure or delay in the exercise, of any rights or remedies will constitute an election of remedies or a waiver of any right or remedy we may have. You acknowledge that: (a) this Contract: (i) is fair and reasonable; (ii) shall bind and be enforceable by you, Gamka Sales Co., Inc., the other Indemnitees, and such parties' respective permitted successors and assigns (there being no other third-party beneficiaries hereto); and (iii) shall be interpreted under the laws of New Jersey; and (b) proper venue for all associated civil legal proceedings shall lie solely in the federal, state and local courts located in or nearest to Middlesex County, NJ (unless waived by GSC). You consent and submit to such jurisdiction and venue and waive all claims that such venue lies in an inconvenient forum. Digital, electronic, photocopied and facsimiled signatures and initials appearing on this Contract and/or on any Addenda will be deemed originals.

16. Any item(s) sold to you ("Sale Items"), as provided on Page 1 are provided "AS-IS" and "WITH ALL FAULTS," are subject to the terms of this Contract (modified to address sales); provided that our obligations under § 5 shall expire and terminate 3 days after the date of purchase. All item(s) not specifically identified as Sale Items on P.1 will be deemed "Rented Item(s)".

17. **WARNING: A person commits THEFT** which may result in **CRIMINAL PROSECUTION** if he purposely obtains services (including the use of movable property), which he knows are available only for compensation, by deception, threat, force or any other means designed to avoid the due payment therefor. See N.J. Stat. Ann., § 2C:20-8, et seq. and its/their successor provision(s) for details.

LESSEE ACKNOWLEDGES THAT A LARGE-PRINT VERSION OF THESE TERMS AND CONDITIONS HAS BEEN MADE AVAILABLE TO LESSEE

Copyright © EquipmentRentalContracts.com, LLC. (866) 582-2586. www.equipmentrentalcontracts.com All rights reserved. Unauthorized reproduction and/or distribution expressly prohibited.